

CALIFORNIA COURT OF APPEAL

FIRST APPELLATE DISTRICT

DIVISION FOUR

CHURCH OF SCIENTOLOGY)
INTERNATIONAL,)

Plaintiff - Respondent)

v.)

GERALD ARMSTRONG,)

Defendant - Appellant.)

Court of Appeal No. A 075027

Marin County Superior Court
No. 157680

Hon. Gary W. Thomas
Superior Court Judge

**MOTION TO STRIKE DECLARATION OF GERALD ARMSTRONG,
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
THEREOF, AND DECLARATION OF ANDREW H. WILSON
IN SUPPORT THEREOF**

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**MOTION TO STRIKE DECLARATION OF GERALD ARMSTRONG,
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF,
AND DECLARATION OF ANDREW H. WILSON IN SUPPORT THEREOF**

Plaintiff and Respondent Church of Scientology International moves this Court to strike the 32-page Declaration of Gerald Armstrong dated December 10, 1997 (the "Declaration") because the declaration is filled with defamatory irrelevancies that are not probative of any issue in appellant's request for extension, and has been filed as a gratuitous attempt to argue the merits of the outstanding contempt citation and bench warrant, which Armstrong chose not to oppose and from which he continues to hide.

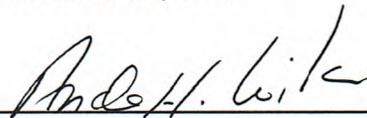
This Motion is based upon the attached memorandum of points and authorities, the declaration of Andrew H. Wilson, the files of record of this case, and such other and further evidence as may properly come before this Court.

Dated: January 15, 1998

Respectfully submitted,

WILSON CAMPILONGO LLP

RABINOWITZ, BOUDIN,
STANDARD, KRINSKY &
LIEBERMAN, P.C.

By: 

Andrew H. Wilson

Attorneys for Plaintiff/Respondent
CHURCH OF SCIENTOLOGY
INTERNATIONAL

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Respondent Church of Scientology International ("Church" or "CSI") moves to strike a 32-page declaration (the "Declaration") filed by appellant Gerald Armstrong ("Armstrong") ostensibly in support of his motion for an extension of time in which to file an opposition to the Church's motion to dismiss the appeal. Although this Court quite properly dismissed the appeal, CSI urges the Court to also strike the Declaration which is filled with scurrilous and irrelevant matters that have no bearing on whether Armstrong's extension request should have been granted or denied, nor do Armstrong's lengthy and false attempts to justify his contempt of the trial court's order.

The Church moves to strike the Declaration of Gerald Armstrong filed with his request for extension because (i) it is not probative of any issue in the request for extension, which is supported by an entirely separate declaration supplied by Armstrong; and (ii) it is nothing more than an attempt to argue the merits of the order holding him in contempt, an issue which Armstrong waived by refusing to show cause why he should not be held in contempt, by refusing to discharge the order or properly noticing an appeal of that order, and by fleeing the jurisdiction so that he could safely continue to violate the injunction and snipe at the trial court's orders from across the border. The scurrilous and irrelevant allegations in Armstrong's declaration manifest the precise type of filing which this Court and the

U.S. Supreme Court have held should be stricken from court records for considerations of public policy addressed below. The Declaration is an improper use of the Court's files to gratify Armstrong's private spite, and such littering of the court's files should not be tolerated.

STATEMENT OF FACTS

As is set forth in detail in the Church's Motion to Dismiss Appeal (See pp. 1-6 of the Memorandum of Points and Authorities), this action arose out of numerous clear and egregious breaches by Armstrong of a settlement agreement (the "Settlement Agreement") he entered into with the Church in December 1986. Those breaches ultimately resulted in a judgment awarding the Church in excess of \$300,000 in liquidated damages and interest -- later discharged in bankruptcy -- plus costs and the issuance of a permanent injunction prohibiting any further breaches by Armstrong, which remain in force.

Armstrong then violated the injunction obligations in January 1997, for which Judge Thomas found Armstrong in contempt and ordered him fined \$1,000 and confined for up to forty-eight hours in the county jail. Armstrong failed to appear for the hearing, and continued to refuse to appear either to discharge the contempt or notice an appeal of the order holding him in contempt; Judge Thomas therefore issued a bench warrant for Armstrong's arrest in August 1997. That warrant is still outstanding. (Wilson Dec., ¶ 5).

The Church filed its motion to dismiss the appeal on November 18, 1997. Armstrong's deadline for filing an opposition was December 8, 1997. C.R.C. 41(a);

C.C.P. § 1013(a). Armstrong did not even request an extension until a week later, on December 15, when he once again requested an extension of time. (Wilson Dec., ¶ 7). The Declaration was purportedly prepared for Armstrong's unfiled opposition to the motion to dismiss. However, the Declaration is not probative of any issue in the request for extension and makes no mention whatever of the request. Instead, while admitting that he has repeatedly violated the underlying settlement agreement and the subsequent permanent injunction enjoining him from such violations, Armstrong attempts to argue the merits of the contempt which he chose not to contest before the trial court.¹ (E.g., ¶ 12, "[I]t is correct to say that Judge Thomas signed Scientology's document which states that I willfully disobeyed the order . . .")

The Declaration also includes pages of unverified postings on an Internet talk group purporting to be by and between Armstrong and others, and other scandalous matters, none of which had the slightest relevancy to Armstrong's request for more time, the appeal itself or the pending motion to dismiss, other than as evidence that Armstrong is continuing to flout the orders of the court by violating the terms of the permanent injunction against him. Armstrong's inclusion of false allegations concerning alleged "assassination plots," "brainwashing," "hiring contract killers to kill critics," and other vile claims may be appropriate to create "sex appeal" in an

¹ Those violations, and others like them, have resulted in the issuance of another Order to Show Cause re Contempt by Judge Thomas, which has been personally served on Armstrong and is scheduled for hearing on January 30, 1998.

adventure novel, but it is highly defamatory, utterly false, and has no business being filed as alleged support for an extension of time.²

ARGUMENT

A cursory examination of the Declaration is all that is required to reach the inescapable conclusion that it lacks even a shred of relevance to any issue ever before this court.

In Nixon v. Warner Communications, Inc. (1978) 435 U.S. 589, 598, 98 S.Ct. 1306, 1312, the Supreme Court established "the power of a court to insure that its records are not 'used to gratify private spite or promote public scandal' Similarly, courts have refused to permit their files to serve as reservoirs of libelous statements for press consumption." Id. (citations omitted).

In language particularly appropriate here, an appellate court of this state has recognized the right and commended the "wise discretion" of a trial court in striking a declaration that "is an attack on the character, reputation, integrity, and professional standing of course It is offensive, scandalous, scurrilous, and defamatory; and it was wholly unnecessary to the proof of defendant's case." Warner v. Warner (1955) 135 Cal.App.2d 302, 287 P.2d 174, 175.

Armstrong filed a two-page declaration that was relevant to the subject matter of his motion. The Church made no objection to its filing. Armstrong's 32-page

² Similar postings by members of this same group of individuals have been found by the Honorable Ronald M. Whyte, United States District Judge, Northern District of California, to be "disgusting" and "as offensive as an [the Court] has ever read." (Wilson Dec., ¶ 9).

declaration, however, is nothing more than a personal attack, not on the appellee, but on "Scientology," which is the name of a religion, and on its attorney, Andrew Wilson. The Declaration claims that Armstrong was threatened and libeled by Mr. Wilson (Armstrong 32-page Dec. ¶¶ 26-27), and that Mr. Wilson lied to him, all of which is utterly false, as the text of the documents he references provide ample evidence. It also contains extensive wholly hearsay innuendo, supported only by Internet postings and descriptions of the posters, without any authentication or competence established. For every attack that Armstrong files, the Church could supply the Court with attestations by tens of thousands of individuals to the great contribution the Church makes to society and to its individual members through social reform and self-help programs, including drug and criminal rehabilitation, moral guidance, and literacy programs, not to mention the spiritual enhancement of its parishioners. But this good news can no more form the basis of deciding Armstrong's request to extend time than can Armstrong's malicious, and entirely false, allegations.

Such attacks on the character of counsel, not to mention the absurd attempt to libel an entire religion, rather than dealing with specific facts and issues relating to the request at hand, have nothing to do with whether Armstrong's request for an extension is meritorious. The Declaration in which they are contained should neither be considered by the Court nor permitted to remain in the files.

CONCLUSION

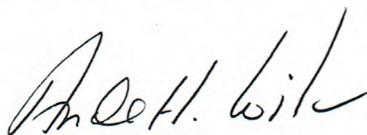
As there is no legitimate basis for the Declaration to remain in the files, and substantial public policy reason for the Declaration to be removed, and for all the reasons set forth above, Armstrong's second Declaration should be stricken.

Dated: January 15, 1998

Respectfully submitted,
WILSON CAMPILONGO LLP

RABINOWITZ, BOUDIN,
STANDARD, KRINSKY &
LIEBERMAN, P.C.

By:



Andrew H. Wilson

Attorneys for Plaintiff/Respondent
CHURCH OF SCIENTOLOGY
INTERNATIONAL

**DECLARATION OF ANDREW H. WILSON IN SUPPORT
OF OPPOSITION TO APPELLANT'S REQUEST FOR EXTENSION AND
MOTION TO STRIKE DECLARATION OF GERALD ARMSTRONG**

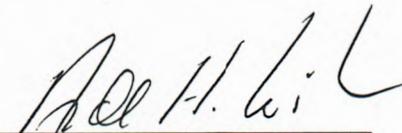
I, ANDREW H. WILSON declare as follows:

1. I am counsel of record for plaintiff and respondent Church of Scientology International ("the Church" or "CSI") in the above-captioned case. The matters herein are stated of my own personal knowledge and, if called as a witness, I could and would testify competently thereto.

2. The Church filed its motion to dismiss the appeal on November 18, 1997. Armstrong's deadline for filing an opposition was December 8, 1997, but Armstrong did not even request an extension until a week later, on December 15, when he requested an extension of time, supported by two declarations.

3. One of these declarations (the "Second Declaration") is 32 pages long and also includes pages of unverified Internet postings purporting to be by and between Armstrong and others, some of whom are copyright infringers under injunctions issued by courts of the United States prohibiting their further violation of Scientology copyrights. Similar postings by members of this same group of individuals have been found by the Honorable Ronald M. Whyte, United States District Judge, Northern District of California, to be "disgusting" and "as offensive as any [the Court] has ever read."

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct. Executed this 15th day of January, 1998.



ANDREW H. WILSON

PROOF OF SERVICE

I declare that I am employed in the City and County of San Francisco, California.

I am over the age of eighteen years and not a party to the within entitled action. My business address is 115 Sansome Street, Suite 400, San Francisco, California.

On January 15, 1998, I caused the attached copy of:

MOTION TO STRIKE DECLARATION OF GERALD ARMSTRONG, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF, AND DECLARATION OF ANDREW H. WILSON IN SUPPORT THEREOF

to be served on the following in said cause, by placing for deposit with the U.S. Mail on this day in the ordinary course of business, true copies thereof enclosed in sealed envelopes. The envelopes were addressed as follows:

Gerald Armstrong
C/O George W. Abbott, Esq.
2245-B Meridian Blvd.
P.O. Box 98
Minden, Nevada 89423-0098

Clerk of Marin County Superior Court
Hall of Justice
Marin Civic Center
San Rafael, CA 94903

In addition, an original and 3 copies of the above-entitled motion were filed with the following:

Clerk of the Court
California Court of Appeal - First Appellate District
Marathon Plaza, South Tower
303 Second Street, Suite 600
San Francisco, CA 94107

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on January 15, 1998.


JUNE WILLIAMS